

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #16	CCRB Case #: 201710270	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/22/2017 1:00 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 5/22/2019	EO SOL 5/22/2019	
Date/Time CV Reported Tue, 12/12/2017 5:17 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 12/12/2017 5:17 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Roberto Vargas	04043	954392	044 PCT
2. POM Maximo Gomez	06426	958643	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Roberto Vargas	Abuse: Police Officer Roberto Vargas entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POM Maximo Gomez	Abuse: Police Officer Maximo Gomez entered § 87(2)(b) in the Bronx.	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on behalf of his mother, § 87(2)(b) via the online website on December 12, 2017.

On November 22, 2017, at approximately 1:00 p.m., PO Roberto Vargas and PO Maximo Gomez entered § 87(2)(b)'s apartment, located at § 87(2)(b), in the Bronx, in regards to a water leak inside the apartment (**Allegation A: Abuse of Authority, § 87(2)(g)** **Allegation B: Abuse of Authority, § 87(2)(g)**). No arrests or summonses resulted from this incident.

Security footage was obtained from § 87(2)(b). The footage, which captures the officers entering § 87(2)(b)'s apartment, § 87(2)(g) (Board Review 07).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Roberto Vargas entered § 87(2)(b), in the Bronx.

Allegation B – Abuse of Authority: Police Officer Maximo Gomez entered § 87(2)(b), in the Bronx.

It is undisputed that PO Vargas and PO Gomez received a call from § 87(2)(b) the superintendent of § 87(2)(b), for a water leak that originated from apartment “§ 87(2)(b)”. It is also undisputed that both PO Vargas and PO Gomez entered the apartment.

§ 87(2)(b) alleged that PO Vargas asked her to enter the apartment, and that she replied, “To keep good faith, I’ll let one of you in.” Both officers then entered the apartment, and § 87(2)(b) put her hand up towards PO Gomez and stated, “Please wait here. I said one.” § 87(2)(b) escorted PO Vargas into the bathroom, and PO Gomez followed shortly after. Both officers observed the damage to the bathroom and then left the apartment (Board Review 01).

§ 87(2)(b) alleged that, upon PO Vargas’s request to enter the apartment, § 87(2)(b) stated that she would allow one of them inside. Both officers then entered the apartment and observed the damage to the bathroom, leaving less than six minutes later without taking any further action (Board Review 02).

§ 87(2)(b) stated in an unsworn phone statement that § 87(2)(b) invited an officer into the apartment to look at the water leak, but § 87(2)(b) could not recall whether she specifically restricted her invitation to only one officer. § 87(2)(b) only recalled one officer entering the apartment. Similarly, § 87(2)(b) a building porter who was also present, stated in an unsworn phone statement that he could not recall whether § 87(2)(b) restricted her consent to only one officer (Board Reviews 03 and 04).

PO Vargas testified that § 87(2)(b) would not allow § 87(2)(b) inside of the apartment to fix the leak, so PO Vargas asked § 87(2)(b) if he could enter the apartment to observe the damage. § 87(2)(b) consented to both officers entering the apartment by stating, “I’ll allow you to enter.” PO Gomez testified that that he wanted to enter the apartment just to survey the damage since there was nothing the officers could do to fix the leak. Upon being asked if the officers could enter the apartment to look at the damage, § 87(2)(b) consented, and did not specify that only one officer could enter. Both officers testified that they entered the apartment, went to the bathroom, observed the damage, and left (Board Reviews 05 and 06).

Security footage, which is silent, shows the officers speaking with § 87(2)(b) and § 87(2)(b) while § 87(2)(b) and two unidentified individuals observe the interaction. One of the individuals, a female individual, is seen standing near an apartment door, while the other, a male individual, is seen with a briefcase. Both officers are seen entering the apartment (Board Review 07).



201710270_20180604_1139_DM.mp4

§ 87(2)(g)

One of the exceptions to the warrant requirement is voluntary consent to search. People v. Gonzalez, 39 N.Y.2d 122 (1976). Consent is voluntary when it is a true act of will, an unequivocal product of an essentially free and unconstrained choice, and that voluntariness is incompatible with official coercion, actual or implicit, overt or subtle. Id.

§ 87(2)(g)

An individual's consent to enter a residence does not provide officers with consent to also conduct a protested search of the residence. People v. O'Neill, 11 N.Y.2d 148 (1962). Consent given to enter a residence, whether verbal or implicit, does not constitute consent to search the residence. People v. Flores, 181 A.D.2d 570 (1992) (Board Reviews 08, 14, and 15)

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- On January 5, 2018, this case was sent to mediation. On May 31, 2018, the case was returned to investigation as the complaint was no longer eligible for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of June 15, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 11).

Civilian and Subject Officer CCRB Histories

- This is the first CCRB complaint to which either § 87(2)(b) or § 87(2)(b) has been a party (Board Reviews 12 and 13).

- PO Vargas has been a member-of-service for five years and this is the first CCRB complaint to which he has been a subject.
- PO Gomez has been a member-of-service for three years and has been a subject in one CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g)

Squad No.: 16

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date